THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.7729 OF 2006

Dated: 18th April, 2006.

Between :

M/s. Madhavi Trading Company,

Rep. by its Proprietor S. Madhavi,

W/o. S. Venkateswara Rao … Petitioner

And

M/s. Andhra Bank, rep. by its Branch Manager,

Seetharampuram Branch, Vijayawada. .. Respondent

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ORDER :

This writ petition is filed seeking a declaration that the action of the respondent – Andhra Bank in seeking to recover the loan amount from the petitioner as arbitrary and illegal.

It is relevant to note that the petitioner does not dispute the fact that it had availed loan from the respondent Bank and that the Bank filed O.A.No.35 of 2004 in the Debts Recovery Tribunal, Visakhapatnam and obtained a decree dated 2-11-2004 for recovery of Rs.52,44,222-85ps. Admittedly, the petitioner did not prefer any appeal against the said decree and thus the same has become final. However, it is pleaded that even after the decree in O.A.No.35 of 2004, negotiations were going on for payment of the decretal amount in installments.

The petitioner alleged that while the proposals were still under consideration, the respondent Bank had proposed to sell the mortgaged property by public auction to be held on 18-4-2006. Hence, this writ petition to stay the said auction.

A perusal of the said letter dated 29-1-2005 placed before this Court shows that after the decree in O.A.No.35 of 2004 the petitioner offered to pay Rs.25 lakhs as compromise for full settlement on 5-1-2005 and the respondent Bank agreed to consider the same subject to down payment of Rs.5 lakhs on 21-1-2005. However, the petitioner failed to make the down payment as agreed. While bringing the said fact to the notice of the petitioner, he was advised to submit the balance sheet of the firm to ascertain the losses.

On the basis of the said letter, even assuming that there were such negotiations for full settlement and proposals were under consideration in January, 2005, what happened thereafter is not known. Nothing has been placed before this Court to show that the petitioner had made the down payment of Rs.5 lakhs as required by the respondent Bank nor even a part of that amount.

Since no payments were made towards the amounts due to the respondent Bank in spite of the decree in O.A.No.35 of 2004, the respondent Bank appears to have initiated execution proceedings, in connection with which the mortgaged properties were brought to sale. At any rate, the petitioner has not even placed before this Court the sale notice or any other material to show that the sale is going to be conducted on 18-4-2006.

Viewed from any angle, the Writ Petition is devoid of any merit and the Writ of Mandamus as prayed for cannot be granted.

Accordingly, the Writ Petition is dismissed. No costs.

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G. ROHINI, J.

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Dt. 18-4-2006

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